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L.F., Appellant)	
)	
and)	Docket No. 20-1020
)	Issued: December 7, 2020
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. MARSHALS SERVICE, New York, NY,)	
Employer)	
)	

Andrew Douglas, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

On April 1, 2020 appellant, through counsel, filed a timely appeal from a March 13, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 20-1020.

On May 10, 2017 appellant, then a 46-year-old federal law enforcement officer, filed an occupational disease claim (Form CA-2) alleging that he developed left wrist carpal tunnel syndrome due to factors of his federal employment, due to repetitive motion including cuffing and uncuffing prisoners since 2001. He indicated that he first became aware of his condition and first realized that it was caused or aggravated by his employment on September 16, 2016. On the reverse side of the claim form, the employing establishment indicated that appellant first reported his condition on May 17, 2017. It noted that appellant was last exposed to conditions alleged to have caused his injury on March 14, 2016. OWCP assigned the case OWCP File No. xxxxxx984.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

In a development letter dated June 7, 2017, OWCP informed appellant that additional evidence was needed to establish of his claim. It advised him of the factual and medical evidence that was needed and attached a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

Appellant responded by letter dated September 2, 2017 and explained that since 2001 he had been repetitively “bending and twisting” his wrists when cuffing and uncuffing prisoners. He explained that he placed inmates in and out of handcuffs and leg irons in order to move them, and that he opened cellblock doors and trap doors to feed inmates, sometimes performing these repetitive activities over a hundred times per day. Appellant indicated that OWCP accepted his claim for right hand carpal tunnel syndrome in OWCP File No. xxxxxx959, and he stated that medical reports related to that claim dated June 9 and 23, 2014 from Dr. Louis Rose, a Board-certified orthopedic surgeon, mentioned his left wrist carpal tunnel syndrome and recommended diagnostic testing for his left wrist. Appellant indicated that Dr. Rose’s physical examination of his left wrist had revealed a positive Phalen’s maneuver and a positive median nerve compression test.

By decision dated October 17, 2017, OWCP denied appellant’s occupational disease claim finding that the evidence of record was insufficient to establish causal relationship between his diagnosed left wrist condition and the accepted factors of his federal employment.

On October 31, 2017 appellant, through former counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review, which was held on April 12, 2018. By decision dated June 27, 2018, a hearing representative affirmed OWCP’s October 17, 2017 decision.

Appellant thereafter continued to submit requests for reconsideration, which OWCP denied after merit reviews on December 19, 2018, February 7 and May 24, 2019. On December 16, 2019 appellant requested reconsideration and submitted additional evidence. By decision dated March 13, 2020, OWCP denied modification of its May 24, 2019 decision.

The Board finds that this case is not in posture for decision.

Pursuant to 20 C.F.R. § 501.2(c)(1), the Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Decisions on claims are based on the written record, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes, or drawings.² Evidence may not be incorporated by reference.³ Evidence contained in another of the claimant’s case files may be used, but a copy of that evidence should be placed into the case file being adjudicated.⁴

On February 26, 2014 appellant filed an occupational disease claim (Form CA-2) assigned OWCP File No. xxxxxx959 alleging that he sustained carpal tunnel syndrome in his right wrist

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

³ *Id.*

⁴ *Id.*

due to factors of his federal employment. OWCP accepted the claim for right carpal tunnel syndrome. In adjudicating appellant's current left wrist carpal tunnel claim in OWCP File No. xxxxxx984, appellant referenced medical evidence in his previously accepted claim for right hand carpal tunnel syndrome in OWCP File No. xxxxxx959. OWCP has not, however, administratively combined the case records or incorporated the relevant and contemporaneous medical evidence into the current case record.⁵ The Board has previously held that if a new injury case is reported for an employee who previously filed an injury claim for a similar condition, administratively combining the files is required.⁶

For a full and fair adjudication the case must be returned to OWCP to combine the current case record with OWCP File No. xxxxxx959. Therefore, the case shall be remanded to OWCP for proper consolidation of case files. After OWCP has developed the record consistent with the above-noted directive, it shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the March 13, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: December 7, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁵ See *id.* at *File Maintenance and Management*, Chapter 2.400.8c (February 2000) (cases should be administratively combined when correct adjudication of the issues depends on frequent cross-reference between files).

⁶ *G.D.*, Docket No. 19-1969 (May 4, 2020).